

# ASX ANNOUNCEMENT

CommonwealthBank



## ISSUE OF ASB SUBORDINATED NOTES 2 (TIER 2 CAPITAL OF ASB BANK LIMITED)

### Notice under section 708A(12H)(e) Corporations Act 2001 (Cth)

**Wednesday, 30 November 2016:** Commonwealth Bank of Australia ("CBA") is pleased to confirm that ASB Bank Limited ("ASB"), its wholly-owned banking subsidiary in New Zealand, today issued NZ\$400 million of subordinated unsecured convertible notes ("ASB Subordinated Notes 2"). ASB Subordinated Notes 2 were issued pursuant to a product disclosure statement dated 25 October 2016 ("PDS") to retail investors in New Zealand and to certain New Zealand and overseas institutional investors, including certain institutional investors in Australia. ASB Subordinated Notes 2 are expected to trade on the NZX Debt Market under code ABB050.

Capitalised terms used but not defined in this notice are defined in the PDS. A modified form of the PDS was released by CBA to the Australian Securities Exchange ("ASX") on 25 October 2016 and may be viewed on [www.asx.com.au](http://www.asx.com.au).

This notice is a cleansing notice prepared for the purposes of section 708A(12H)(e) of the Corporations Act 2001 (Cth) ("Corporations Act") (as inserted by ASIC Corporations (Regulatory Capital Securities) Instrument 2016/71). CBA and ASB have elected to give this notice to enable CBA Ordinary Shares issued on Conversion to be sold without disclosure under Chapter 6D of the Corporations Act. This notice includes all the information investors and their professional advisers would reasonably require to make an informed assessment of:

- in schedule 1, the rights and liabilities attaching to ASB Subordinated Notes 2 as set out in the Terms, which are attached as a schedule to the Deed Poll; and
- in schedule 2, the rights and liabilities attaching to CBA Ordinary Shares,

in each case only to the extent to which it is reasonable for investors and their professional advisers to expect to find the information in this notice.

CBA and ASB each confirm that:

- (a) ASB Subordinated Notes 2 were issued without disclosure to investors under Part 6D.2 of the Corporations Act;
- (b) the information in this notice (including the schedules) remains current as at today's date;

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- (c) this notice (including the schedules) complies with section 708A of the Corporations Act, as modified by ASIC Corporations (Regulatory Capital Securities) Instrument 2016/71; and
- (d) this notice complies with section 708A(12I) of the Corporations Act as inserted by ASIC Corporations (Regulatory Capital Securities) Instrument 2016/71.

## EFFECT OF THE ASB SUBORDINATED NOTES 2 OFFER ON CBA

The issue of ASB Subordinated Notes 2 by ASB will not have a material impact on CBA's financial position. If a Non-Viability Trigger Event occurs and CBA issues CBA Ordinary Shares, the impact of Conversion on CBA would be to increase CBA's shareholders' equity. The number of CBA Ordinary Shares issued on Conversion is limited to the Maximum Conversion Number. The Maximum Conversion Number is 315 CBA Ordinary Shares per 5,000 ASB Subordinated Note 2<sup>1</sup> (with a nominal value of A\$4,745), based on the Issue Date VWAP of A\$75.2842 per CBA Ordinary Share and the Issue Date Cross Rate A\$/NZ\$ of 1.0538.

## ADDITIONAL INFORMATION

CBA is a disclosing entity for the purposes of the Corporations Act and, as a result, is subject to regular reporting and disclosure obligations under the Corporations Act and the ASX Listing Rules. In addition, CBA must notify ASX immediately (subject to certain exceptions) if it becomes aware of information about CBA that a reasonable person would expect to have a material effect on the price or value of its securities including CBA Ordinary Shares.

Copies of documents lodged with ASIC can be obtained from, or inspected at, an ASIC office. They can also be obtained from [www.asx.com.au](http://www.asx.com.au) together with CBA's other ASX announcements.

Information relating to ASB and ASB Subordinated Notes 2 is available free of charge on the online Disclose register maintained by the New Zealand Companies Office. The Disclose register can be accessed at [www.business.govt.nz/disclose](http://www.business.govt.nz/disclose). The information contained on the Disclose register includes copies of the Deed Poll and Co-Ordination Agreement.

The following information can be obtained from the Shareholder Centre at: [www.commbank.com.au](http://www.commbank.com.au):

- CBA's half-yearly and annual financial reports;
- Continuous disclosure notices lodged with ASX; and
- Other general information provided to investors.

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<sup>1</sup> The minimum application amount for the Offer was 5,000 ASB Subordinated Notes 2.

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CBA will provide a copy of any of the following documents free of charge to any person upon their written request:

- CBA's latest annual financial report, for the year ended 30 June 2016;
- Any continuous disclosure notices given by CBA in the period after the lodgement of its annual financial report for the year ended 30 June 2016 and before the date of this notice; and
- CBA's constitution.

Written requests for copies of these documents should be made to:

Investor Relations  
Commonwealth Bank of Australia  
Ground Floor, Tower 1  
201 Sussex Street  
Sydney NSW 2000

**The offer of ASB Subordinated Notes 2 has closed. No disclosure document in relation to ASB Subordinated Notes 2 has been or will be lodged with the Australian Securities and Investments Commission.**

Taryn Morton  
Company Secretary  
**Commonwealth Bank of Australia  
Sydney**

Graeme Edwards  
Company Secretary  
**ASB Bank Limited  
Auckland**

For additional information, please contact:  
Tricia Ho-Hudson  
Head of Capital and Regulatory Strategy  
Telephone (02) 9118 1319

*This announcement does not constitute an offer to sell, or the solicitation of an offer to buy, any securities in the United States or to, or for the account or benefit of, any U.S. person (as defined in Regulation S under the U.S. Securities Act of 1933, as amended (the "Securities Act")). The ASB Subordinated Notes 2 have not been, and will not be, registered under the Securities Act or the securities laws of any state or other jurisdiction in the United States. Accordingly, the ASB Subordinated Notes 2 may not be offered or sold in the United States or to, or for the account or benefit of, any U.S. person (as defined in Regulation S under the Securities Act) unless they have been registered under the Securities Act, or are offered and sold in a transaction exempt from, or not subject to, the registration requirements of the Securities Act and applicable U.S. state securities laws.*

ENDS

# ASX ANNOUNCEMENT

**Commonwealth**Bank



## SCHEDULE 1 –

## RIGHTS AND LIABILITIES ATTACHING TO ASB SUBORDINATED NOTES 2

Terms of ASB Subordinated Notes 2 – extracted from Schedule 1 to the Deed Poll dated 12 October 2016

## **SCHEDULE 1**

### **Terms**

#### **1. FORM AND RANKING**

##### **1.1 Form**

- (a) The Securities are subordinated, unsecured debt obligations of ASB constituted by the Deed Poll and issued in registered form by entry in the Register. The Securities are not deposit liabilities or protected accounts of CBA for the purposes of the Banking Act or deposit liabilities of ASB. ASB is not a bank or authorised deposit-taking institution which is authorised under the Banking Act.
- (b) Each entry in the Register evidences a separate and independent obligation which ASB owes to the relevant Holder, which that Holder may enforce without joining any other Holder or any previous Holder.
- (c) No certificates, notices of registration or statements of holding in relation to the Securities will be issued to Holders unless ASB is required to provide certificates, notices of registration or statements of holding by any applicable law or the NZDX Listing Rules. Any such certificate, notice or statement will be in the form agreed between ASB and the Registry and will contain all information required by applicable law and the NZDX Listing Rules. A certificate, notice of registration or statement of holding in respect of a Security will not constitute a document of title. Entitlement will be determined solely by entry in the Register.

##### **1.2 Face Value**

Each Security is issued fully paid with the principal amount of NZ\$1.00.

##### **1.3 Payment and ranking in a Liquidation of ASB**

- (a) If an order is made by a court of competent jurisdiction (other than an order successfully appealed or permanently stayed within 30 Business Days), or an effective resolution is passed, for the Liquidation of ASB, the Securities are, subject to this clause 1.3, immediately due and payable for an amount equal to the Face Value plus accrued but unpaid Interest up to (but excluding) the Commencement of Liquidation.

- (b) Except for certain debts that are required to be preferred by applicable laws, each Security shall rank for payment in a Liquidation of ASB:
  - (i) after the claims of all holders of Senior Ranking Obligations;
  - (ii) equally among themselves and with Equal Ranking Securities; and
  - (iii) ahead of all Junior Ranking Securities.
- (c) In a Liquidation of ASB, payments on each Security are subject to:
  - (i) all holders of Senior Ranking Obligations being paid in full before the Holder's claim is paid; and
  - (ii) Holders of Securities and holders of any Equal Ranking Securities being paid on a pro-rata basis.
- (d) Each Holder irrevocably acknowledges and agrees that:
  - (i) in accordance with section 313(3) of the Companies Act, he or she is accepting a lower priority in relation to the debt represented by each Security than that which it would otherwise have under section 313 of the Companies Act;
  - (ii) nothing in sections 310 or 313 of the Companies Act will prevent these Terms from having effect in accordance with their terms;
  - (iii) the subordination set out in this clause 1.3 is not affected by any act or omission of ASB, or of any holder of Senior Ranking Obligations, which might otherwise affect the Holder at law or in equity;
  - (iv) the Holder must not exercise its voting rights as an unsecured creditor in the Liquidation or voluntary administration of ASB in respect of the Securities to defeat the subordination in this clause 1.3; and
  - (v) the Holder does not have any right to prove in a Liquidation of ASB in respect of the Securities, other than a right to prove in a Liquidation of ASB in New Zealand as permitted under clauses 1.3(b) and (c).
- (e) For the avoidance of doubt but subject to clause 4.3(a), if a Non-Viability Trigger Event has occurred, Holders will rank in a winding up of CBA as holders of the number of CBA Ordinary Shares to which they became entitled under clause 5.1.

#### 1.4 **Other issues**

Nothing in these Terms shall be construed or deemed to limit the ability of ASB to issue further Senior Ranking Obligations, Equal Ranking Securities or Junior Ranking Securities.

#### 1.5 **No set off**

- (a) ASB has no rights of set off in respect of any amounts owing by it to a Holder in respect of the Securities against any claims owing by the Holder to it or to any member of ASB Group.
- (b) No Holder has any right of set off in respect of any amounts or any right to merge accounts or to exercise any other rights the effect of which is, or may be, to reduce the amount payable by ASB in respect of the Securities to the Holder.

#### 1.6 **Solvency condition to payment of Face Value and Interest**

- (a) Prior to Liquidation the obligations of ASB to make any payment in respect of the Securities (other than payments of the Face Value together with accrued and unpaid Interest in respect of a Security on the Maturity Date) will be conditional upon ASB being able to make such payment and remain Solvent and the ASB Group being Solvent immediately after such payment is made ("**Solvency Condition**").
- (b) Any amount not paid on account of the Solvency Condition does not cause an Event of Default and remains as a debt owing by ASB to the relevant Holders which is payable on the first Business Day on which the amount may be paid in compliance with the Solvency Condition. Interest which is subject to this clause 1.6 earns interest in accordance with clause 2.4.
- (c) A certificate signed by ASB, two authorised signatories of ASB, its auditor or, if ASB is in Liquidation, its liquidator, as to whether the Solvency Condition is met at any time is (in the absence of wilful default, bad faith or manifest error) conclusive evidence of the information contained in the certificate and will be binding on the Holders. In the absence of such a certificate, Holders are entitled to assume (unless the contrary is proved) that the Solvency Condition is met.

#### 1.7 **Issue restriction**

Securities may only be offered (directly or indirectly) for issue, or applications invited for the issue of Securities, in or into Australia, if such offer or invitation complies with the selling restrictions set out in section 10 of the PDS.

## **2. INTEREST**

### **2.1 Interest**

- (a) Subject to subclause (c), each Security bears interest ("**Interest**") on its Face Value during each Interest Period from (and including) the Issue Date to (but excluding) the Maturity Date or Redemption Date, at the Interest Rate.
- (b) Subject to clause 1.6, Interest is payable in arrear on each Interest Payment Date.
- (c) No Interest accrues on the Securities required to be Exchanged in the period from (and including) the Interest Payment Date that immediately precedes the date of the occurrence of the Non-Viability Trigger Event to the Exchange Date or Write Down Date (as applicable).

### **2.2 Interest Rate determination**

The Interest Rate (expressed as a percentage per annum) for each Interest Period will be the sum of the Market Rate plus the Margin, where:

**"Market Rate"** means:

- (a) for each Interest Period that ends before or on (but excluding) the Call Option Date, the average of the bid and offered swap yields as displayed at or about 11:00am on the Bookbuild Date on Bloomberg Professional Service page "ICNI" (or its successor page) for a NZD interest rate swap with a term equal to five years, or if the rate is unable to be determined in that manner, the average of the bid and offered swap rates quoted to ASB by three registered banks (or such one or more of them as are quoting) at or about 11:00am on the Bookbuild Date for a NZD interest rate swap with a term equal to five years (with the rate in each case adjusted for quarterly payments); and
- (b) for each Interest Period that commences on or after the Call Option Date, the average of the bid and offered swap yields as displayed at or about 11:00am on the Call Option Date on Bloomberg Professional Service page "ICNI" (or its successor page) for a NZD interest rate swap with a term equal to five years, or



if the rate is unable to be determined in that manner, the average of the bid and offered swap rates quoted to ASB by three registered banks (or such one or more of them as are quoting) at or about 11:00am on the Call Option Date for a NZD interest rate swap with a term equal to five years (with the rate in each case adjusted for quarterly payments); and

**"Margin"** means the rate (expressed as a percentage per annum) determined under the Bookbuild.

## 2.3 Calculation of Interest

The amount of Interest payable on each Security for each Interest Period:

- (a) that is not a Partial Interest Period is calculated according to the following formula:

$$\text{Interest Payable} = \frac{\text{Interest Rate} \times \text{Face Value}}{4}$$

- (b) that is a Partial Interest Period is calculated in accordance with the following formula:

$$\text{Interest Payable} = \frac{\text{Interest Rate} \times \text{Face Value} \times N}{365}$$

Where:

**N** means, in respect of a Partial Interest Period, the number of days in that Partial Interest Period.

## 2.4 Accrual of Interest

If any Interest which is due and payable is not paid for any reason, then such unpaid Interest earns interest at the Interest Rate, which accrues daily at the Interest Rate until paid. Such accrued interest is payable on the first to occur of:

- (a) the date on which the relevant unpaid Interest amount is paid; and
- (b) the date on which the relevant Security is Redeemed.

## 2.5 Calculations

For the purposes of any calculations required under these Terms:

- (a) subject to subclause (b), all percentages resulting from such calculations will be rounded, if necessary, to the nearest one hundred-thousandth of a percentage point (with 0.000005% being rounded up to 0.00001%);
- (b) the Market Rate and the Margin will be rounded to two decimal places (with 0.005% being rounded up to 0.01%);
- (c) all figures will be rounded to four decimal places (with 0.00005 being rounded up to 0.0001); and
- (d) all amounts that are due and payable will be rounded to the nearest one New Zealand cent (with one half of a New Zealand cent being rounded up to one New Zealand cent).

## **2.6 Notification of Interest Rate, Interest and other amounts**

- (a) ASB must notify NZX of the Interest Rate, amount of Interest payable and Interest Payment Date for each Interest Period.
- (b) ASB must give notice under this clause 2.6 as soon as practicable after it makes its calculations and by no later than the fourth Business Day of the relevant Interest Period.
- (c) ASB may amend its calculation or determination of any date, rate or amount (or make appropriate alternative arrangements by way of adjustment) including as a result of the extension or reduction of the Interest Period without prior notice but must notify NZX promptly after doing so.

## **2.7 Determinations final**

ASB's determination of all dates, rates and amounts, under these Terms is, in the absence of wilful default, bad faith or manifest error, final and binding on the Registry and each Holder.

## **3. REDEMPTION AND EARLY REDEMPTION**

### **3.1 Redemption on the Maturity Date**

Each Security will be Redeemed on the Maturity Date for its Face Value unless previously Redeemed, Exchanged or Written Down.

### 3.2 **Redemption at the option of ASB**

- (a) Subject to clauses 1.6 and 3.5, ASB may, on an Optional Redemption Date, having given not less than 20 Business Days' nor more than 60 Business Days' prior irrevocable notice to the Holders (with a copy to the Registry), Redeem all or some of the Securities for their Face Value together with any accrued but unpaid Interest as at the Optional Redemption Date.
- (b) In the case of a Redemption of some but not all of the Securities, the Securities to be Redeemed will be specified in the notice and selected:
  - (i) in a manner that is, in the opinion of ASB, fair and reasonable; and
  - (ii) in compliance with any applicable law, directive or requirement of NZX.

*Holders should not expect that RBNZ's and APRA's approval will be given for any Redemption of the Securities.*

### 3.3 **Redemption for taxation reasons**

Subject to clauses 1.6 and 3.5, if, at any time after the Issue Date, ASB receives an opinion from reputable legal counsel or other tax adviser in New Zealand, experienced in such matters, to the effect that there is a material risk that:

- (a) any interest payable on Securities is not, or will not be, allowed as a deduction for the purposes of New Zealand income tax; or
- (b) ASB or the consolidated tax group of which it is a member would be exposed to any other adverse tax consequence in relation to the Securities,

in each case as a result of a change in law or interpretation of law that in either case has occurred or will occur (including following any announcement of a prospective change or amendment which has been or will be introduced), other than where ASB expected such event as at the Issue Date or the event is minor, then ASB may Redeem all (but not some) of those Securities for their Face Value together with any accrued but unpaid Interest as at the Redemption Date.

However, ASB may only Redeem the Securities under this clause 3.3 if:

- (c) ASB has given notice of its election to do so at least 20 Business Days (and no more than 60 Business Days) before the proposed Redemption Date specified in the notice to the Holders;

- (d) the proposed Redemption Date is a Scheduled Interest Payment Date; and
- (e) the notice of Redemption is not given earlier than 60 Business Days before the Interest Payment Date occurring immediately before the earliest date on which ASB would be subject to the adverse tax consequence.

*Holders should not expect that RBNZ's and APRA's approval will be given for any Redemption of the Securities.*

### **3.4 Redemption for regulatory reasons**

Subject to clauses 1.6 and 3.5, if, at any time after the Issue Date:

- (a) ASB determines that all, some or a proportion of all or some Securities are not or will not be treated as Tier 2 Capital of the ASB Group under RBNZ's prudential standards (as amended from time to time), as a result of a change in the laws of New Zealand, RBNZ's prudential standards or treatment under RBNZ's prudential standards that in each case has occurred or will occur (including following any announcement of a prospective change or amendment which has been or will be introduced), other than as a result of an event ASB expected as at the Issue Date or as a result of an event which is minor; or
- (b) ASB receives notice in writing from CBA to the effect that CBA has determined that as a result of a change in laws of Australia or a change in APRA's prudential standards that in either case has occurred or will occur (including following any announcement of a prospective change or amendment which has been or will be introduced) all, some or a proportion of all or some Securities are not or will not be treated as Tier 2 Capital of the CBA Level 2 Group under APRA's prudential standards (as amended from time to time), other than as a result of a limit on the treatment of the Securities as Tier 2 Capital of the CBA Group in effect on the Issue Date or as a result of an event ASB expected as at the Issue Date or as a result of an event which is minor,

then ASB may Redeem all (but not some) of those Securities for their Face Value together with any accrued but unpaid Interest as at the Redemption Date.

However, ASB may only Redeem the Securities under this clause 3.4 if:

- (c) ASB has given notice of its election to do so at least 20 Business Days (and no more than 60 Business Days) before the proposed Redemption Date specified in the notice to the Holders;

- (d) the proposed Redemption Date is a Scheduled Interest Payment Date; and
- (e) the notice of Redemption is not given earlier than 60 Business Days before the Interest Payment Date occurring immediately before the earliest date on which all, some or a proportion of all or some of the Securities will cease to be treated as Tier 2 Capital of the ASB Group or the CBA Level 2 Group (as applicable).

*Holders should not expect that RBNZ's and APRA's approval will be given for any Redemption of the Securities.*

### **3.5 RBNZ and APRA approval required to Redeem**

ASB may only elect to Redeem Securities under clauses 3.2, 3.3 or 3.4 if:

- (a) ASB either:
  - (i) before or concurrently with the Redemption, replaces the Securities with a capital instrument which is of the same or better quality (for the purposes of RBNZ's and APRA's prudential standards as they are applied to the ASB Group and CBA Group at the relevant time) and the replacement is done under conditions that are sustainable for the income capacity of the ASB Group and CBA Group; or
  - (ii) obtains confirmation:
    - (aa) from RBNZ that RBNZ is satisfied, having regard to the capital position of the ASB Group; and
    - (bb) from APRA that APRA is satisfied, having regard to the capital position of the CBA Level 2 Group,that ASB does not have to replace the Securities; and
- (b) RBNZ and APRA have given prior written approval for the Redemption. Approval is at the discretion of RBNZ and APRA and may or may not be given.

## **4. EXCHANGE UPON THE OCCURRENCE OF A NON-VIABILITY TRIGGER EVENT**

### **4.1 Non-Viability Trigger Event**

- (a) If a Non-Viability Trigger Event occurs, ASB must Exchange such number of Securities as is equal (taking into account any exchange, conversion or write down of Relevant Securities as referred to in clauses 4.1(b)(i)(aa) and (bb) or

clauses 4.1(b)(ii)(aa) and (bb)) to the aggregate face value of capital instruments which RBNZ or APRA (as applicable) has notified ASB or CBA (as applicable), or the statutory manager of ASB has decided, must be exchanged, converted or written down (or, if RBNZ or APRA (as applicable) has not so notified ASB or CBA (as applicable), such number as is necessary to satisfy RBNZ or APRA (as applicable) that ASB or CBA (as applicable) will no longer be non-viable). If a Non-Viability Trigger Event occurs under paragraph (b) of the definition of CBA Non-Viability Trigger Event, ASB must Exchange all the Securities.

(b) In determining the number of Securities which must be Exchanged in accordance with this clause 4.1:

(i) in the case of an ASB Non-Viability Trigger Event, ASB will:

- (aa) first, exchange, convert or write down the face value of any Relevant Tier 1 Securities whose terms require or permit, or are taken by law to require or permit, them to be exchanged, converted or written down before Exchange of the Securities;
- (bb) secondly, exchange, convert or write down the face value of any Relevant Tier 2 Securities whose terms require or permit, or are taken by law to require or permit, them to be exchanged, converted or written down before Exchange of the Securities; and
- (cc) thirdly, if exchange, conversion or write down of those securities is not sufficient, Exchange (in the case of the Securities) or exchange, convert or write down (in the case of any other Relevant Tier 2 Securities), on a pro-rata basis or in a manner that is otherwise, in the opinion of ASB, fair and reasonable, the Securities and any other Relevant Tier 2 Securities whose terms require or permit, or are taken by law to require or permit, them to be exchanged, converted or written down in that manner (subject to such adjustments as ASB in consultation with CBA (where applicable) may determine to take into account the effect on marketable parcels and whole numbers of CBA Ordinary Shares and any Securities or other Relevant Tier 2 Securities remaining on issue),

but such determination will not impede the immediate Exchange of the relevant number of Securities.

(ii) in the case of a CBA Non-Viability Trigger Event, ASB will and will procure that CBA will (as applicable):

(aa) first, exchange, convert or write down the face value of any Relevant Tier 1 Securities whose terms require or permit, or are taken by law to require or permit, them to be exchanged, converted or written down before Exchange of the Securities;

(bb) secondly, exchange, convert or write down the face value of any Relevant Tier 2 Securities whose terms require or permit, or are taken by law to require or permit, them to be exchanged, converted or written down before Exchange of the Securities; and

(cc) thirdly, if exchange, conversion or write down of those securities is not sufficient, Exchange (in the case of the Securities) or exchange, convert or write down (in the case of any other Relevant Tier 2 Securities), on a pro-rata basis or in a manner that is otherwise, in the opinion of ASB and CBA, fair and reasonable, the Securities and any other Relevant Tier 2 Securities whose terms require or permit, or are taken by law to require or permit, them to be exchanged, converted or written down in that manner (subject to such adjustments as ASB and CBA may determine to take into account the effect on marketable parcels and whole numbers of CBA Ordinary Shares and any Securities or other Relevant Tier 2 Securities remaining on issue),

but such determination will not impede the immediate Exchange of the relevant number of Securities.

(c) For the purposes of clause 4.1(a) and 4.1(b), where the specified currency of the principal amount of the Relevant Securities and/or the Securities is not the same, ASB and/or CBA may treat them as if converted into a single currency of ASB's or CBA's (as applicable) choice at such rate of exchange as ASB or CBA (as applicable) in good faith considers reasonable.

#### 4.2 **Automatic Exchange upon the occurrence of a Non-Viability Trigger Event**

- (a) If a Non-Viability Trigger Event occurs then, subject to clauses 4.3 and 5.11:
  - (i) Exchange of the relevant Security will occur in accordance with clause 5 immediately upon the date of the occurrence of the Non-Viability Trigger Event; and
  - (ii) the entry of the relevant Security in each relevant Holder's holding in the Register immediately prior to Exchange occurring will constitute an entitlement of that Holder to the relevant number of CBA Ordinary Shares (and, if applicable, also to any remaining balance of Securities), and CBA in accordance with the Co-Ordination Agreement will recognise the Holder as having been issued the relevant CBA Ordinary Shares for all purposes,

in each case without the need for any further act or step by ASB, ASBH, CBA, the Holder or any other person.

For the avoidance of doubt, nothing in these Terms allows a payment to be made by ASB or CBA to a Holder upon Exchange, other than a payment obligation which is discharged or netted in accordance with the Co-Ordination Agreement.

- (b) If a Non-Viability Trigger Event occurs:
  - (i) ASB must give notice as soon as practicable that Exchange has occurred to NZX and the Holders;
  - (ii) the notice must specify the dates on which the Non-Viability Trigger Event and Exchange respectively occurred; and
  - (iii) the notice must specify the details of the Exchange process, including any details which were taken into account in relation to the effect on marketable parcels, whole numbers of CBA Ordinary Shares and different currencies, and the impact on any Securities remaining on issue.
- (c) Failure to undertake any of the matters described in clause 4.2(b) does not prevent, invalidate or otherwise impede any Exchange Step.
- (d) Each of the Exchange Steps is independent of the other, and not conditional on the other occurring.



#### 4.3 **No further rights if Exchange cannot occur**

- (a) If, for any reason, Exchange of any Security required to be Exchanged under clause 4.2 fails to take effect and CBA has not otherwise issued the CBA Ordinary Shares required to be issued in respect of such Exchange within 5 Business Days after the date of the occurrence of the Non-Viability Trigger Event, then the relevant Holder's rights in relation to such Security (including any right to be issued CBA Ordinary Shares on Exchange and to payment of Interest and the Face Value) are immediately and irrevocably terminated (also known as Written Down). As required by the RBNZ prudential standards, the Write Down will be taken to have occurred on the date of the occurrence of the Non-Viability Trigger Event.
- (b) If, for any reason, Exchange of any Security required to be Exchanged under clause 4.2 fails to take effect because the Exchange Step in clause 5.1(a) fails to occur and the Security has not otherwise been transferred to ASBH in accordance with clause 5.1(a) within 5 Business Days after the date of the occurrence of the Non-Viability Trigger Event, then the relevant Holder's rights in relation to such Security (including any right to be issued CBA Ordinary Shares on Exchange if not already issued and to payment of Interest and the Face Value) are immediately and irrevocably terminated (also known as Written Down). As required by RBNZ prudential standards, the Write Down will be taken to have occurred immediately on the date of the occurrence of the Non-Viability Trigger Event. Securities will not be Exchanged, Redeemed or resold under these Terms on any subsequent date.
- (c) If such termination occurs:
  - (i) ASB must give notice as soon as practicable to NZX and the relevant Holders; and
  - (ii) the notice must specify the date on which the Non-Viability Trigger Event occurred.
- (d) In this clause 4.3:
  - (i) neither sub-clause (a) nor (b) above limits the other;
  - (ii) a reference to a Holder's rights in relation to a Security at a particular time means the rights a Holder has under these Terms and the Co-

Ordination Agreement after taking into account the effect of any Exchange Step that has occurred;

- (iii) a reference to a Holder does not include ASBH if the relevant Security has been transferred to it in accordance with clause 5.1(a); and
- (iv) if a Security is required to be Exchanged, then from the date of the Non-Viability Trigger Event all rights of the relevant Holder in relation to the Security are suspended.

## **5. GENERAL PROVISIONS APPLICABLE TO EXCHANGE**

### **5.1 Exchange**

On the Exchange Date, subject to clauses 4.3 and 5.11:

- (a) each Security that is required to be Exchanged shall be automatically and immediately transferred to ASBH free of any encumbrance and the transfer shall be irrevocable; and
- (b) CBA will immediately issue the Exchange Number of CBA Ordinary Shares to the relevant Holders or the Nominee (as applicable) in accordance with the Co-Ordination Agreement in respect of each Security that is required to be Exchanged.

### **5.2 Exchange Number**

- (a) The Exchange Number is calculated according to the following formula, and subject always to the Exchange Number being no greater than the Maximum Exchange Number:

$$\text{Exchange Number for each Security} = \frac{\text{Face Value} \times \text{Cross Rate}}{0.99 \times \text{VWAP}}$$

Where:

**"Cross Rate"** (expressed as a currency exchange rate) means the average rate at which NZ\$1.00 would purchase or sell Australian dollars, as displayed at or about 2:00pm on the Bloomberg screen page NZDAUD NZFF CRNCY (or its successor page) during the 5 Business Day period immediately preceding (but excluding) the Exchange Date;

**"VWAP"** (expressed in Australian dollars and Australian cents) means the VWAP during the relevant VWAP Period;

**"Maximum Exchange Number"** means a number calculated according to the following formula:

$$\text{Maximum Exchange Number} = \frac{\text{Face Value} \times \text{Issue Date Cross Rate}}{0.20 \times \text{Issue Date VWAP}}$$

**"Issue Date Cross Rate"** (expressed as a currency exchange rate) means the average rate at which NZ\$1.00 would purchase or sell Australian dollars, as displayed at or about 2:00pm on the Bloomberg screen page NZDAUD NZFF CRNCY (or its successor page) during the 20 Business Day period immediately preceding (but excluding) the Issue Date; and

**"Issue Date VWAP"** (expressed in Australian dollars and Australian cents) has the meaning given in clause 12.2; and

- (b) if the total number of additional CBA Ordinary Shares to be issued in respect of a Holder's aggregate holding of Securities includes a fraction of a CBA Ordinary Share, that fraction of a CBA Ordinary Share will be disregarded.

### 5.3 **Adjustments to VWAP generally**

For the purposes of calculating the VWAP under clause 5.2:

- (a) where, on some or all of the Business Days in the relevant VWAP Period, CBA Ordinary Shares have been quoted on ASX as cum dividend or cum any other distribution or entitlement and Securities will be Exchanged for CBA Ordinary Shares after that date and those CBA Ordinary Shares will no longer carry that dividend or any other distribution or entitlement, then the VWAP on the Business Days on which those CBA Ordinary Shares have been quoted cum dividend or cum any other distribution or entitlement will be reduced by an amount ("**Cum Value**") equal to:
  - (i) in the case of a dividend or other distribution, the amount of that dividend or other distribution;

- (ii) in the case of any other entitlement that is not a dividend or other distribution under clause 5.3(a)(i) which is traded on ASX on any of those Business Days, the volume weighted average price of all such entitlements sold on ASX during the relevant VWAP Period on the Business Days on which those entitlements were traded (excluding trades of the kind that would be excluded in determining VWAP under the definition of that term); or
  - (iii) in the case of any other entitlement which is not traded on ASX during the relevant VWAP Period, the value of the entitlement as reasonably determined by the CBA Board and notified in writing to ASB by CBA; and
- (b) where, on some or all of the Business Days in the relevant VWAP Period, CBA Ordinary Shares have been quoted as ex dividend or ex any other distribution or entitlement, and Securities will be Exchanged for CBA Ordinary Shares which would be entitled to receive the relevant dividend, distribution or entitlement, the VWAP on the Business Days on which those CBA Ordinary Shares have been quoted ex dividend or ex any other distribution or entitlement will be increased by the Cum Value.

#### 5.4 **Adjustments to VWAP for capital reconstruction**

- (a) Where, during the relevant VWAP Period, there is a change to the number of CBA Ordinary Shares on issue because the CBA Ordinary Shares are reconstructed, consolidated, divided or reclassified (not involving any cash payment or other distribution to or by the holders of CBA Ordinary Shares) ("**Reclassification**") into a lesser or greater number, the daily VWAP for each day in the relevant VWAP Period which falls before the date on which trading in CBA Ordinary Shares is conducted on a post Reclassification basis will be adjusted by multiplying the applicable VWAP by the following formula:

$$\frac{A}{B}$$

Where:

- A** means the aggregate number of CBA Ordinary Shares immediately before the Reclassification; and

**B** means the aggregate number of CBA Ordinary Shares immediately after the Reclassification.

- (b) Any adjustment made by ASB in accordance with clause 5.4(a) will be effective and binding on Holders under these Terms and these Terms will be construed accordingly.
- (c) For the avoidance of doubt, nothing in this clause 5.4, allows a payment, or any other compensation, to be made to or by a Holder as part of a Reclassification or as a result of a Reclassification.

#### 5.5 **Adjustments to Issue Date VWAP generally**

For the purposes of determining the Issue Date VWAP under clause 5.2, adjustments will be made in accordance with clause 5.3 and clause 5.4 during the relevant VWAP Period. On and from the Issue Date, adjustments to the Issue Date VWAP:

- (a) may be made by ASB in accordance with clauses 5.6 to 5.8 (inclusive);
- (b) if so made, will correspondingly cause an adjustment to the Maximum Exchange Number; and
- (c) if so made, will be effective and binding on Holders under these Terms and these Terms will be construed accordingly.

#### 5.6 **Adjustments to Issue Date VWAP for bonus issues**

- (a) Subject to clauses 5.6(b) and 5.6(c), if CBA makes a pro-rata bonus issue of CBA Ordinary Shares to holders of CBA Ordinary Shares generally, the Issue Date VWAP will be adjusted immediately in accordance with the following formula:

$$V = V_o \times RD / (RD + RN)$$

Where:

**V** means the Issue Date VWAP applying immediately after the application of this formula;

**V<sub>o</sub>** means the Issue Date VWAP applying immediately prior to the application of this formula;

**RD** means the number of CBA Ordinary Shares on issue immediately prior to the allotment of new CBA Ordinary Shares pursuant to the bonus issue; and

**RN** means the number of CBA Ordinary Shares issued pursuant to the bonus issue.

(b) Clause 5.6(a) does not apply to CBA Ordinary Shares issued as part of a bonus share plan, employee or executive share plan, executive option plan, share top up plan, share purchase plan or a dividend reinvestment plan.

(c) For the purposes of this clause 5.6, an issue will be regarded as a bonus issue notwithstanding that CBA does not make offers to some or all holders of CBA Ordinary Shares with registered addresses outside Australia (or to whom an offer is otherwise subject to foreign securities laws), provided that in so doing CBA is not in contravention of the ASX Listing Rules.

## 5.7 **Adjustments to Issue Date VWAP for capital reconstruction**

If, at any time after the Issue Date, there is a change to the number of CBA Ordinary Shares on issue because of a Reclassification into a lesser or greater number, the Issue Date VWAP will be adjusted by multiplying the Issue Date VWAP applicable on the Business Day immediately before the date of any such Reclassification by the following formula:

$$\frac{A}{B}$$

Where:

**A** means the aggregate number of CBA Ordinary Shares on issue immediately before the Reclassification; and

**B** means the aggregate number of CBA Ordinary Shares on issue immediately after the Reclassification.

**5.8 No adjustment to Issue Date VWAP in certain circumstances**

Despite the provisions of clauses 5.6 and 5.7, no adjustment will be made to the Issue Date VWAP where any such adjustment (rounded if applicable) would be less than one percent of the Issue Date VWAP then in effect.

**5.9 Announcement of adjustments to Issue Date VWAP**

ASB will notify any adjustment to the Issue Date VWAP under clauses 5.5 to 5.7 (inclusive) to NZX and the Holders within 10 Business Days of ASB determining the adjustment (or such earlier period as is required by the NZDX Listing Rules) and the adjustment will be final and binding.

**5.10 Status and listing of CBA Ordinary Shares**

- (a) CBA Ordinary Shares issued in accordance with clause 5.1(b) are issued to the relevant Holder fully paid in consideration of the transfer of, or where clause 4.3(b) or clause 5.11(b) applies, the termination of the relevant Holder's rights in respect of the relevant Security and will rank equally with all other fully paid CBA Ordinary Shares provided that the rights attaching to those CBA Ordinary Shares do not take effect until 5:00pm (Sydney time) on the Exchange Date (or such other time required by the RBNZ and APRA).
- (b) ASB will procure that CBA will use all reasonable endeavours to list the CBA Ordinary Shares issued in accordance with clause 5.1(b) on ASX.

**5.11 Exchange where the Holder does not wish to receive CBA Ordinary Shares or is an Ineligible Holder**

- (a) If Securities of a Holder are required to be Exchanged and:
  - (i) the Holder has notified the Registry that it does not wish to receive CBA Ordinary Shares in respect of all or part of its holding of Securities as a result of Exchange, which notice may be given at any time on or after the Issue Date and prior to the Exchange Date;
  - (ii) the Holder is an Ineligible Holder; or
  - (iii) ASB has not received (for any reason whether or not due to the fault of that Holder) any information required by it in accordance with these Terms so as to impede CBA issuing the CBA Ordinary Shares to a Holder on the Exchange Date,

then, on the Exchange Date, ASB will procure that CBA will (subject to clause 5.11(b)) issue the Exchange Number of CBA Ordinary Shares to a nominee (which nominee may not be ASB, CBA or a Related Entity of ASB or CBA and may be appointed at any time on or from the Issue Date) ("**Nominee**") for no additional consideration to hold on trust for sale for the benefit of the relevant Holder (unless, because the Holder is an Ineligible Holder, the Nominee is deemed to be an Ineligible Holder, in which case such issue shall occur as soon as practicable after the Nominee ceases to be an Ineligible Holder). At the first opportunity to sell the CBA Ordinary Shares, the Nominee will arrange for their sale and pay the proceeds less its selling costs to the relevant Holder.

- (b) Without limiting clause 4.3, if, for any reason Exchange of any Security required to be Exchanged under clause 4.2 fails to take effect and CBA has not otherwise issued the CBA Ordinary Shares required to be issued in respect of such Exchange to the Nominee within 5 Business Days after the date of the occurrence of the Non-Viability Trigger Event, then the relevant Holder's rights in relation to such Security (including any right to be issued CBA Ordinary Shares on Exchange and to payment of Interest and the Face Value) are immediately and irrevocably terminated (also known as Written Down). As required by the RBNZ prudential standards, the Write Down will be taken to have occurred on the date of the occurrence of the Non-Viability Trigger Event. In this clause 5.11(b), a reference to a Holder's rights in relation to a Security at a particular time means the rights a Holder has under these Terms and the Co-Ordination Agreement after taking into account the effect of any Exchange Step that has occurred.
- (c) If such termination occurs:
  - (i) ASB must give notice as soon as practicable to NZX and the relevant Holders; and
  - (ii) the notice must specify the date on which the Non-Viability Trigger Event occurred.

## 5.12 **Holder Acknowledgments**

Each Holder irrevocably:

- (a) consents to becoming a member of CBA upon CBA issuing CBA Ordinary Shares to it in accordance with clause 5.1(b) and agrees to be bound by the constitution of CBA;



- (b) acknowledges and agrees that it is obliged to accept CBA Ordinary Shares if it holds Securities that are required to be Exchanged as and when required by clauses 4 and 5 notwithstanding anything that might otherwise affect Exchange including:
  - (i) any change in the financial position of CBA since the issue of such Securities;
  - (ii) any disruption to the market or potential market for the CBA Ordinary Shares or to capital markets generally;
  - (iii) any breach by ASB or CBA of any obligation in connection with the Securities; or
  - (iv) any failure to or delay in exchange, conversion or write down of other Relevant Securities;
- (c) acknowledges and agrees that:
  - (i) it will not have any rights to vote in respect of any Exchange or Write Down;
  - (ii) it has no claim against ASB or CBA for any loss it may suffer arising in connection with any Exchange, any Exchange Step not occurring, or Write Down; and
  - (iii) it has no rights to compensation from, or any other remedies against, CBA, ASB or any other member of the CBA Group on account of the failure of CBA to issue CBA Ordinary Shares if CBA is for any reason prevented from doing so;
- (d) acknowledges and agrees that it has no right to request Exchange or to determine whether (or in what circumstances) the Securities it holds are Exchanged;
- (e) acknowledges that if it creates or permits to subsist any encumbrance over any Securities, that encumbrance takes effect subject to these Terms and the Co-Ordination Agreement and the secured party will be taken to have authorised the dealing constituted by the Exchange for the purposes of section 45(1) of the Personal Property Securities Act 1999 (NZ); and

- (f) acknowledges and agrees that any information held by ASB in relation to the Holder and in connection with the Securities may be shared with any other member of the CBA Group for any purpose in connection with the Securities, including in relation to the issue and holding of CBA Ordinary Shares.

## **6. TITLE AND TRANSFER OF SECURITIES**

### **6.1 Effect of entries in Register**

Each entry in the Register of a person as a Holder constitutes:

- (a) conclusive evidence of that person's:
  - (i) absolute ownership of that Security; and
  - (ii) entitlement to the other benefits given to Holders under the Deed Poll in respect of Securities; and
- (b) an undertaking by ASB to pay Interest and any other amount in accordance with these Terms,

subject to correction of the Register for fraud or error.

### **6.2 Non-recognition of interests**

Except as required by law or as ordered by a court of competent jurisdiction, ASB and the Registry must treat the person whose name is entered in the Register as a Holder as the absolute beneficial owner of that Security. This clause 6.2 applies despite any notice of ownership, trust, encumbrance or interest in that Security. No recognition of any trust, encumbrance or interest shall be entered on the Register.

### **6.3 Joint holders**

Where two or more persons are entered in the Register as joint Holders, they are taken to hold that Security as joint tenants with rights of survivorship and subject to the terms of the Deed Poll but the Registry is not bound to register more than three persons as joint Holders of any Security.

### **6.4 Transfers**

- (a) Without prejudice to clause 6.4(b), a Holder may transfer Securities:

- (i) by means of any system declared to be a designated settlement system under section 156N of the Reserve Bank Act;
  - (ii) by a transfer in any commonly used form which must be delivered to the Registry with any evidence the Registry reasonably requires to prove title to or the right to transfer Securities; or
  - (iii) by any other method of transfer of marketable securities that is not contrary to any applicable law and that may be operated in accordance with the NZDX Listing Rules and that is approved by ASB.
- (b) A Security that is required to be Exchanged is transferred in accordance with clause 5.1(a) without any act or consent of the relevant Holder being required.
- (c) Subject to clause 4.2, title to Securities passes when details of the transferee are entered in the Register.
- (d) A Security may be transferred in whole but not in part. No transfer of any part of a Holder's holding may, subject to clause 4, be effected if such transfer:
  - (i) would result in the transferor or the transferee holding or continuing to hold Securities of less than the Minimum Holding; or
  - (ii) is a transfer of Securities in, to, or from Australia, unless the transfer complies with the selling restrictions set out in section 10 of the PDS.
- (e) ASB must comply with the NZDX Listing Rules and any applicable law in relation to the transfer of the Securities.
- (f) ASB must not charge any fee on the transfer of Securities.
- (g) The Holder is responsible for any stamp duty, taxes and other governmental charges which are payable in any jurisdiction in connection with a transfer, assignment or other dealing with the Securities.
- (h) Upon registration and entry of the transferee in the Register, the transferor ceases to be entitled to future benefits under the Deed Poll in respect of the transferred Securities.
- (i) Subject to the NZDX Listing Rules and any applicable law, ASB may determine that transfers of some or all Securities will not be registered during any period reasonably specified by it prior to the Exchange Date or Redemption Date of such Securities.

## **6.5 Refusal to register**

ASB will procure that the Registry will only refuse to register a transfer of Securities if permitted by, or if such registration would contravene or is forbidden by, the NZDX Listing Rules, any applicable law or these Terms. If the Registry refuses to register a transfer, ASB must procure the Registry to give the lodging party notice of the refusal and the reasons for it within 5 Business Days after the date on which the transfer was delivered to the Registry.

## **6.6 Transmission**

A person becoming entitled to a Security as a consequence of the death, bankruptcy, liquidation or a winding-up of a Holder or of a vesting order by a court or other body with power to make the order, or a person administering the estate of a Holder, may, upon providing evidence as to that entitlement or status, and if ASB so requires an indemnity in relation to the correctness of such evidence, as ASB considers sufficient, become registered as the Holder of that Security.

## **6.7 Selling restrictions**

- (a) Each Holder shall only offer for sale or sell any Security in conformity with all applicable laws and regulations in any jurisdiction in which it is offered, sold or delivered.
- (b) Neither the PDS nor any advertisement or other offering material in respect of any Security may be published, delivered or distributed in or from any country or jurisdiction except under circumstances which will result in compliance with all applicable laws and regulations.
- (c) Each Holder shall indemnify ASB, the Arrangers and Joint Lead Managers in respect of any loss incurred as a result of that Holder breaching subclause (a) or (b) above.

# **7. PAYMENTS**

## **7.1 Payments to registered Holder**

- (a) Payment of Interest and repayment of Face Value in respect of a Security will be made to the person registered on the Record Date as the Holder.
- (b) Payment of any other amount in accordance with these Terms will be made to the person registered as the Holder on the relevant date for payment.

- (c) A payment to any one of joint Holders will discharge ASB's liability in respect of the payment.
- (d) For the avoidance of doubt, nothing in these Terms allows a payment to a Holder in a form other than cash, other than a payment obligation which is discharged or netted in accordance with the Co-Ordination Agreement.

## 7.2 **Payments subject to law**

All payments are subject to applicable law.

## 7.3 **Payments on Business Days**

If any payment:

- (a) is due on a day which is not a Business Day, then the due date for payment will be the next Business Day; or
- (b) is to be made to an account on a Business Day on which banks are not open for general banking business in the place in which the account is located, then the due date for payment will be the next day on which banks are open for general banking business in that place.

No additional amount is payable in respect of any delay in payment.

This clause does not apply to any payment that is required to be made under the Co-Ordination Agreement.

## 7.4 **Payments to accounts**

Monies payable by ASB to a Holder may be paid by crediting a New Zealand dollar bank account maintained in New Zealand with a financial institution and nominated in writing by the Holder by close of business on the relevant Record Date or in any other manner ASB decides.

## 7.5 **Unsuccessful attempts to pay**

- (a) If the Holder has not notified the Registry of a bank account for the purposes of payment under clause 7.4 or the transfer of any amount does not complete for any reason (other than an error made by or on behalf of ASB), ASB will be treated as having paid the amount ("**unclaimed money**") on the date on which it would otherwise have made the payment.

- (b) ASB will send a notice to the registered address of the Holder advising of the unsuccessful payment and the unclaimed money will be held on deposit in a non-interest bearing bank account maintained by ASB or the Registry until the Holder nominates a New Zealand dollar bank account maintained in New Zealand for crediting with the unclaimed money (or nominates a new bank account as the case may be) or the unclaimed money is forfeited under clause 11.1.
- (c) No additional amount is payable in respect of any delay in payment.

## **8. TAXATION, AND WITHHOLDINGS AND DEDUCTIONS**

### **8.1 General**

All payments in respect of Securities must be made free and clear of, and without any withholding or deduction in respect of taxes, unless the withholding or deduction is required by law or permitted by clauses 8.2, 8.3, 8.4 or 8.5.

### **8.2 New Zealand non-resident withholding tax or Approved Issuer Levy**

- (a) Where New Zealand's non-resident withholding tax regime applies to a payment of Interest (or payments deemed by the Income Tax Act 2007 to be interest) to a Holder (including, if applicable, any other person who beneficially derives Interest under the relevant Security), New Zealand non-resident withholding tax will be deducted from such payments.
- (b) Notwithstanding the above, but subject to clause 8.2(c):
  - (i) where the Security meets the requirements of section 86IB of the Stamp and Cheque Duties Act 1971, and provided that any other requirements for the lawful payment of Approved Issuer Levy at a rate of zero percent are satisfied, ASB will make payments of Interest (or deemed interest) to such a Holder without any deduction on account of New Zealand non-resident withholding tax or Approved Issuer Levy; and
  - (ii) where clause 8.2(b)(i) does not apply, and where ASB is lawfully able to pay Approved Issuer Levy in respect of any payment of Interest (or deemed interest) to such a Holder, then, unless requested otherwise by such Holder in writing and agreed to by ASB (or the Registry on its behalf), Approved Issuer Levy will be deducted from such payments of

Interest (or deemed interest) without any deduction on account of New Zealand non-resident withholding tax.

- (c) Clause 8.2(b)(i) and clause 8.2(b)(ii) will not apply where such a Holder derives Interest jointly with one or more person, and one or more of those persons who derive the Interest is resident in New Zealand.

### **8.3 New Zealand resident withholding tax**

- (a) Where New Zealand's resident withholding tax regime applies to a payment of Interest (or payments deemed by the Income Tax Act 2007 to be interest) to a Holder (including, if applicable, any other person who beneficially derives Interest under the relevant Security), New Zealand resident withholding tax will be deducted from such payments.
- (b) Notwithstanding the above, no such deduction of New Zealand resident withholding tax shall be made if the Holder (including, if applicable, any other person who beneficially derives Interest under the relevant Security) establishes to the satisfaction of ASB (or the Registry on its behalf) at least 10 Business Days prior to the relevant payment of Interest that it holds a current certificate of exemption from New Zealand resident withholding tax, or is otherwise exempt from New Zealand resident withholding tax.

### **8.4 Deductions and withholdings**

- (a) If ASB is to make any deduction or withholding on account of taxes from any payment to a Holder (including, if applicable, any other person who beneficially derives Interest under the relevant Security), it must make the deduction or withholding at the highest rate applicable unless the Holder establishes to ASB (and ASB accepts) that a lesser rate is appropriate.
- (b) ASB is not required to, and will not, make any additional payment by way of gross-up or otherwise with respect to the deduction or withholding from any payment made in respect of the Security under this clause 8.
- (c) If, in respect of any Security and for whatever reason, ASB or the Registry becomes liable to make any payment of, or on account of, tax payable by any Holder (including, if applicable, any other person who beneficially derives Interest under the relevant Security), then the relevant Holder will indemnify ASB and the Registry in respect of that liability. Any moneys paid by ASB or the Registry in respect of the liability may be recovered from the Holder as a debt

due to ASB or the Registry and may be withheld from any further payments to that Holder. Nothing in this clause 8.4(c) limits or affects any other right or remedy of ASB or the Registry.

- (d) ASB and the Registry are entitled, for the purposes of clauses 8.2 and 8.3:
  - (i) to rely solely upon any evidence produced, or statement made, by (or on behalf of) a Holder (including, if applicable, any other person who beneficially derives Interest under the relevant Security) in relation to that Holder's tax status or tax residency;
  - (ii) to regard the Holders entered in the Register as the only beneficial owners of, or the only persons who beneficially derive Interest under, the relevant Security.
- (e) Neither ASB nor the Registry is obliged to take any action or make any adjustments on account of any withholdings or deductions already made as a result of any change or alteration of a Holder's (including, if applicable, any other person who beneficially derives Interest under the relevant Security) tax status or tax residency previously notified to, or assumed by, ASB or the Registry.

## 8.5 **FATCA**

- (a) ASB, in its absolute discretion, may withhold or deduct payments to a Holder (including, if applicable, any other person who beneficially derives Interest under the relevant Security) where it is required to do so under or in connection with FATCA, or where it has reasonable grounds to suspect that the Holder or a beneficial owner of Securities may be subject to FATCA, and may deal with such payment and the Holder's Securities in accordance with FATCA.
- (b) If any withholding or deduction arises under or in connection with FATCA, ASB will not be required to pay any further amounts on account of such withholding or deduction or otherwise reimburse or compensate, or make any payment to, a Holder or a beneficial owner of Securities for or in respect of any such withholding or deduction.
- (c) Each Holder (including, if applicable, any other person who beneficially derives Interest under the relevant Security) will, within 10 Business Days of request by ASB, supply to ASB such forms, documentation and other information relating to its status under FATCA as ASB reasonably requests for the purposes of ASB's compliance with FATCA.



## 9. SUBSTITUTION OF CBA

9.1 ASB may, without the consent of Holders, substitute for CBA a NOHC as the issuer of the ordinary shares to be issued on the occurrence of a Non-Viability Trigger Event ("**Successor**") by giving notice to NZX and the Holders, provided that:

- (a) on the occurrence of a Non-Viability Trigger Event, the Successor or another entity (which is a parent entity or operating holding company) automatically subscribes for CBA Ordinary Shares in such amount as may be necessary to ensure that the capital position of the CBA Level 1 Group and the CBA Level 2 Group will not be adversely affected;
- (b) on the occurrence of a Non-Viability Trigger Event, the Successor or that other entity automatically subscribes for fully paid ordinary shares in ASB or such other capital instruments acceptable to RBNZ in such amount as may be necessary, or takes other steps acceptable to RBNZ, to ensure that the capital position of ASB will not be adversely affected;
- (c) the Successor will expressly assume CBA's obligations under the Co-Ordination Agreement including to deliver fully paid ordinary shares in its capital under all circumstances when CBA would otherwise have been required to deliver CBA Ordinary Shares, subject to the same terms and conditions as set out in these Terms (with all necessary modifications);
- (d) ASB enters into a deed poll amending the Deed Poll to reflect the substitution of the Successor for CBA, which amendments can be made without the assent, approval or authority of the Holders;
- (e) the Successor's ordinary shares are or are to be quoted on ASX, and the Successor agrees to use all reasonable endeavours and furnish all such documents, information and undertakings as may be reasonably necessary in order to procure quotation of ordinary shares issued pursuant to these Terms on the securities exchanges on which the Successor's ordinary shares are quoted at the time of delivery;
- (f) the Successor, ASB and CBA have obtained approval from APRA and RBNZ and all other necessary authorisations, regulatory and governmental approvals and consents for such substitution and for the performance by the Successor of its obligations under the Co-Ordination Agreement in relation to the Securities and the documents effecting substitution;

- (g) if the Successor does not have a place of business in each of New Zealand and New South Wales, the Successor has appointed a process agent in each of New Zealand and New South Wales to receive service of process on its behalf in relation to any legal proceedings arising out of or in connection with the Co-Ordination Agreement;
- (h) the Successor has, in the reasonable opinion of ASB, the financial capacity to satisfy its obligations under the Co-Ordination Agreement; and
- (i) ASB has used all reasonable endeavours to give an irrevocable notice to the Holders as soon as practicable before a NOHC Event occurs but no later than 10 Business Days before the NOHC Event occurs specifying the amendments to the Securities which will be made under these Terms in connection with the substitution of a NOHC as issuer of ordinary shares on Exchange.

## 9.2 **Effect of Substitution**

If the relevant requirements set out in clause 9.1 have been completed ("**Date of Substitution**"), on and from the Date of Substitution:

- (a) if ASB gives a notice to Holders under clause 9.1(i), the amended Terms will have effect on and from the date specified in the notice; and
- (b) references to CBA in the Deed Poll will be taken to be references to the Successor.

## 10. **EVENTS OF DEFAULT**

### 10.1 **Events of Default**

An Event of Default occurs:

- (a) if ASB fails to pay any amount due in respect of the Securities and such default continues for a period of 15 Business Days and is continuing, provided that no Event of Default shall arise on account of any non-payment if ASB withholds, deducts from or refuses to make the payment:
  - (i) in order to comply with any law or regulation (including, without limitation, regulations issued by RBNZ or APRA) or with the order of any court of competent jurisdiction, in each case applicable to such payment; or

- (ii) in case of doubt as to the validity or applicability of any such law, regulation or order, in accordance with advice given to ASB as to such validity or applicability, at any time during the said period of 15 Business Days, by independent legal advisers; or

- (b) on the Commencement of Liquidation.

## 10.2 **Notification**

If an Event of Default occurs, ASB will, promptly after becoming aware of it, notify the Registry and Holders of the occurrence of the Event of Default.

## 10.3 **Remedies for an Event of Default**

If an Event of Default occurs:

- (a) under clause 10.1(a), any Holder may institute proceedings:
  - (i) to recover the amount ASB has failed to pay, provided that ASB may only be compelled to pay that amount to the extent that, immediately after the payment, ASB would remain Solvent;
  - (ii) for specific performance of any other obligation in respect of the Security; or
  - (iii) for the Liquidation; or
- (b) under clause 10.1(b), any Holder may, subject to clause 1.3, prove in the Liquidation in respect of the Face Value together with any accrued but unpaid Interest up to (but excluding) the Commencement of Liquidation.

A Holder has no right to accelerate payment or exercise any other remedy (including any right to sue for damages) as a consequence of any Event of Default other than as set out in this clause 10.3.

## 11. **GENERAL**

### 11.1 **Time limit for claims**

If unclaimed money is not claimed within five years after its due date it is taken to be forfeited to ASB for ASB's benefit and shall no longer be treated as unclaimed money.

## 11.2 **Meetings of Holders**

The Deed Poll contains provisions for convening meetings of Holders to consider matters affecting their interests including certain variations of these Terms which require the Holder's consent. Resolutions passed in accordance with such provisions will be binding on all Holders.

## 11.3 **Amendment of the Terms without consent**

At any time, but subject to compliance with all applicable laws and clause 11.5, ASB may by deed poll, without the consent of Holders, amend the Deed Poll, if ASB is of the opinion that such alteration is:

- (a) of a formal, technical or minor nature;
- (b) made to cure any ambiguity, correct any manifest error or correct or supplement any defective provision of these Terms or amend any provision of the Deed Poll;
- (c) necessary or expedient for the purposes of facilitating a substitution of a Successor in accordance with clause 9 including satisfying any requirement of the RBNZ and APRA in connection with such a substitution and, where the terms on which the NOHC acquires CBA are such that the number of its ordinary shares on issue immediately after its substitution differs from the number of CBA Ordinary Shares on issue before that substitution, an adjustment to any relevant VWAP or Issue Date VWAP consistent with the principles of adjustment set out in clauses 5.3 to 5.8 (inclusive);
- (d) made to amend any date or time period stated, required or permitted in connection with any Redemption or Exchange (including, without limitation, when the proceeds of Redemption are to be reinvested in a new security to be issued by ASB or a Related Entity); or
- (e) not materially prejudicial to the interests of Holders as a whole;
- (f) made to enable the Securities to be listed for quotation, or to retain quotation, on any securities exchange or to be offered for subscription or sale under the laws for the time being in force in any place; or
- (g) made to comply with the provisions of any statute, the requirements of any statutory authority, the NZDX Listing Rules, or the listing or quotation requirements of any securities exchange on which ASB may propose to seek a listing or quotation of the Securities.

The Terms of all Securities will be amended from the date specified by ASB.

**11.4 Amendment of the Terms with consent**

Subject to clause 11.5 and without limiting clause 11.3, ASB may by deed poll amend the Deed Poll if such alteration is approved by a Special Resolution. The Terms of all Securities will be amended from the date specified in the Special Resolution or otherwise notified to Holders (provided such date is permitted by the terms of the Special Resolution).

**11.5 Required consents**

Any amendments are subject to notice of non-objection by RBNZ and/or prior written approval by APRA (where any amendments may affect the eligibility of the Securities as Tier 2 Capital) and any consent or approval required under any applicable law, regulation or NZDX Listing Rule.

**11.6 Amendment of the Co-Ordination Agreement**

Subject to a notice of non-objection from RBNZ and/or prior written approval by APRA (where any amendment may affect the eligibility of the Securities as Tier 2 Capital), ASB may amend the Co-Ordination Agreement without the consent of Holders.

**11.7 Payment of Interest and Redemption following Exchange**

Nothing in clauses 1.5, 1.6 and 3 applies to Securities that have been Exchanged and the accrual and payment of interest on and redemption of such Securities will be determined in accordance with the terms set out in the Co-Ordination Agreement.

**11.8 Rights of ASB**

If ASB is declared subject to statutory management pursuant to section 117 of the Reserve Bank Act, ASB shall have the right to require the Exchange of Securities in accordance with these Terms.

**11.9 Notices**

**(a) To Holders**

Subject to clauses 4.2(b), 4.3(c) and 5.11(c), all notices and other communications to Holders must be in writing and either (i) sent by prepaid post (airmail if appropriate) to or left at the address of the Holders (as shown in the Register at the close of business on the day which is 3 Business Days before

the date of the notice or communication) or (ii) in relation to a Security quoted on the NZX Debt Market or another stock exchange, by announcement on that stock exchange. An accidental or inadvertent failure to give notice to a particular Holder will not invalidate a notice otherwise properly given to Holders.

(b) **To ASB and Registry**

All notices and other communications by a Holder to ASB or Registry must be in writing and (i) sent by email or (ii) sent by prepaid post (airmail if appropriate) to or left at the address of ASB or the Registry (in each case, as shown in section 14 of the PDS), or to such other address or email address as ASB or the Registry notifies the Holders as its address or email address (as the case may be) for notices or other communications from time to time.

(c) **When effective**

Subject to clause 4.2(b), 4.3(c) and 5.11(c), notices and other communications take effect from the time they are taken to be received unless a later time is specified in them.

(d) **Receipt**

- (i) If sent by email, notices or other communications are taken to be received at the time they are sent, as evidenced by the electronic time stamp on the relevant email;
- (ii) Subject to the NZDX Listing Rules, if sent by post, notices or other communications are taken to be received 3 Business Days after posting (or 5 Business Days after posting if sent to or from a place outside New Zealand);
- (iii) If left at the address, notices or other communications are taken to be received when given unless received after 5:00pm in the place of receipt or on a non-working day, in which case they are taken to be received at 9:00am on the next working day; and
- (iv) Notices given to Holders by being announced on the NZX Debt Market or other stock exchange are taken to be received on the date on which they are announced.

#### **11.10 Governing law**

- (a) Subject to clause 11.10(b), these Terms are governed by and must be construed according to the law applying in New Zealand.
- (b) Notwithstanding clause 11.10(a), clauses 4, 5 and 9 are governed by and must be construed according to the law in force in New South Wales, Australia.

#### **11.11 Jurisdiction**

- (a) ASB irrevocably submits, and each Holder is taken to irrevocably submit, to the non-exclusive jurisdiction of the courts of New Zealand and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to the Deed Poll.
- (b) In addition, ASB irrevocably submits, and each Holder is taken to irrevocably submit, to the non-exclusive jurisdiction of the courts of New South Wales, Australia and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to clauses 4, 5 and 9.

#### **11.12 Waiver of objection**

ASB irrevocably waives, and each Holder is taken irrevocably to waive, any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 11.11.

#### **11.13 Ability to trade**

ASB, CBA or any of their respective Related Entities may, with RBNZ's and APRA's prior written approval, at any time buy or sell Securities in the open market, by tender to all or some of the Holders, by private agreement or in any other manner, at any price.

#### **11.14 Benefit**

- (a) Clause 6.4(b) is intended to confer a benefit on, and may be enforced by, ASBH under the Contracts (Privity) Act 1982. Clause 11.3 is intended to confer a benefit on, and may be enforced by, CBA under the Contracts (Privity) Act 1982.
- (b) ASB declares that it holds the benefit of clauses 4 and 5 on trust for itself, CBA and ASBH, with the intent that CBA and ASBH (as the case may be) have the

benefit of, and be entitled to enforce, these provisions as if named as a party to the Deed Poll.

## **12. INTERPRETATION AND DEFINITIONS**

### **12.1 Interpretation**

In these Terms, unless the contrary intention appears:

- (a) a reference to:
  - (i) these Terms is a reference to these Terms as supplemented, modified or altered in accordance with these Terms;
  - (ii) an agreement or instrument includes any variation, supplement, replacement or novation of that agreement or instrument;
  - (iii) a person includes a reference to the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
  - (iv) any thing is a reference to the whole and each part of it;
  - (v) one gender includes every other gender;
  - (vi) a document includes all schedules or annexes to it;
  - (vii) a clause or paragraph is to a clause or paragraph of these Terms; and
  - (viii) a statute, ordinance, code, rule, directive or law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (b) the singular includes the plural and vice versa;
- (c) the word "encumbrance" means any mortgage, pledge, charge, lien, assignment by way of security, hypothecation, security interest, title retention, preferential right or trust arrangement, any other security agreement or security arrangement (including any security interest under the Personal Property Securities Act 1999



(NZ)) and any other arrangement of any kind having the same effect as any of the foregoing;

- (d) the word "person" includes a firm, body corporate, an unincorporated association, a governmental or local authority or agency, or other entity;
- (e) the word "law" includes common law, principles of equity and laws made by parliament (including regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (f) the words "prudential standards" and "regulation" in clauses 3.4(a), 3.5(a)(i) (as it relates to RBNZ), 4.3, 5.11(b) and 10.1(a) includes conditions of registration and prudential regulatory requirements;
- (g) the word "tax" includes any present or future liability for tax (whether direct or indirect), any impost, duty, deduction or withholding of any nature and whatever called (including, for the avoidance of doubt, Approved Issuer Levy), imposed or levied by any governmental authority, together with any cost, interest, penalty, fee or other amount imposed or made on, or in relation to, or as a result of any of the foregoing;
- (h) any reference to a time is to New Zealand time;
- (i) headings are inserted for convenience and do not affect the interpretation of these Terms;
- (j) another grammatical form of a defined word or expression has a corresponding meaning;
- (k) if an event under these Terms must occur on a stipulated day which is not a Business Day, then, for an event other than a Non-Viability Trigger Event and Exchange, the stipulated day will be taken to be the next Business Day, unless a contrary intention is expressed;
- (l) the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions;
- (m) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (n) any provisions which refer to:

- (i) RBNZ's requirements or any other prudential regulatory requirements will apply to ASB only if ASB is an entity, or the holding company of an entity, or is a direct or indirect subsidiary of an entity subject to regulation and supervision by RBNZ at the relevant time; and
  - (ii) APRA requirements or any other prudential regulatory requirements will apply to CBA only if CBA is an entity, or the holding company of an entity, or is a direct or indirect subsidiary of an entity (including a NOHC) subject to regulation and supervision by APRA at the relevant time;
- (o) any provisions which require RBNZ's or APRA's consent or approval (written or otherwise) will apply only if RBNZ or APRA (as applicable) requires that such consent or approval be given at the relevant time;
- (p) any provision in these Terms requiring prior RBNZ or APRA approval for a particular course of action to be taken by ASB or CBA do not imply that RBNZ or APRA (as applicable) has given its consent or approval to the particular action as at the Issue Date;
- (q) a reference to a term defined by the NZDX Listing Rules or ASX Listing Rules shall, if that term is replaced in those rules, be taken to be a reference to the replacement term;
- (r) if the principal securities exchange on which CBA Ordinary Shares are listed becomes other than ASX, unless the context otherwise requires a reference to ASX shall be read as a reference to that principal securities exchange and a reference to the ASX Listing Rules or any term defined in any such rules, shall be read as a reference to the corresponding rules of that exchange; and
- (s) so long as the Securities are quoted on the NZX Debt Market, these Terms are to be interpreted in a manner consistent with the NZDX Listing Rules except to the extent that an interpretation consistent with those rules would affect the eligibility of the Securities as Tier 2 Capital.

## 12.2 Definitions

In these Terms, unless the contrary intention appears:

**"Approved Issuer Levy"** means, in relation to any payment of interest (as defined in section 86F of the Stamp and Cheque Duties Act 1971) under any Security, the levy

payable by ASB in accordance with section 86J of the Stamp and Cheque Duties Act 1971.

**"APRA"** means the Australian Prudential Regulation Authority (ABN 79 635 582 658) or any successor body responsible for prudential regulation of CBA.

**"ASB"** means ASB Bank Limited.

**"ASB Group"** has the meaning given to "banking group" in ASB's conditions of registration (as amended from time to time).

**"ASBH"** means ASB Holdings Limited.

**"ASB Non-Viability Trigger Event"** means:

- (a) a direction is given, by notice in writing, to ASB by RBNZ under section 113 of the Reserve Bank Act, on the basis that the financial position of ASB is such that it meets any grounds in sections 113(1)(a) to (e) of the Reserve Bank Act, requiring ASB to convert or write down a class of capital instruments that includes the Securities; or
- (b) ASB is made subject to statutory management pursuant to section 117 of the Reserve Bank Act and the statutory manager announces his or her decision to convert or write down a class of capital instruments that includes the Securities (by publication of a notice on ASB's website or other suitable public forum).

**"ASX"** means ASX Limited (ABN 98 008 624 691) or the securities market operated by it, as the context requires.

**"ASX Listing Rules"** means the listing rules of ASX from time to time with any applicable modification or waiver granted by ASX.

**"Australian dollar", "A\$" and "Australian cent"** means the lawful currency of the Commonwealth of Australia.

**"Banking Act"** means the Banking Act 1959 (Cth).

**"Bookbuild"** means the process conducted before the Offer opens where brokers and investors bid for Securities and, on the basis of those bids, ASB sets the Margin.

**"Bookbuild Date"** means 2 November 2016, being the date on which the Bookbuild occurs.

**"Business Day"** means a day which is:

- (a) a business day within the meaning of the NZDX Listing Rules;
- (b) for the purposes of calculation or payment of Interest, a day on which banks are open for general business in Auckland and Wellington; and
- (c) for the purposes of the definition of "Issue Date VWAP" and "VWAP Period" and clauses 4.3, 5.3, 5.7 and 5.11, a business day within the meaning of the ASX Listing Rules.

**"Call Option Date"** means the Scheduled Interest Payment Date falling five years after the Issue Date.

**"CBA"** means Commonwealth Bank of Australia (ABN 48 123 123 124).

**"CBA Board"** means either the board of directors of CBA or a committee appointed by the board of directors of CBA.

**"CBA Group"** means CBA (or any NOHC that is a holding company of CBA) and its Subsidiaries.

**"CBA Level 1 Group"** means:

- (a) CBA; or
- (b) "the extended licensed entity" which is comprised of CBA and each Subsidiary of CBA as specified in any approval granted by APRA in accordance with APRA's prudential standards (as amended from time to time).

**"CBA Level 2 Group"** means CBA and each Subsidiary of CBA that is recognised by APRA as part of CBA's Level 2 group in accordance with APRA's prudential standards (as amended from time to time).

**"CBA Non-Viability Trigger Event"** means when APRA notifies CBA in writing that it believes:

- (a) an Exchange of all or some Securities, or conversion or write down of capital instruments of the CBA Group, is necessary because, without it, CBA would become non-viable; or
- (b) a public sector injection of capital, or equivalent support, is necessary because, without it, CBA would become non-viable.

**"CBA Ordinary Share"** means a fully paid ordinary share in the capital of CBA.

**"Commencement of Liquidation"** means, in respect of ASB, the commencement of Liquidation under:

- (a) section 241(5) or section 317 of the Companies Act; or
- (b) under any other legislation under which ASB will irrevocably cease to be duly incorporated or to validly exist in New Zealand.

**"Companies Act"** means the Companies Act 1993 (NZ).

**"Co-Ordination Agreement"** means the agreement dated on or about 12 October 2016 between ASB, ASBH and CBA.

**"Corporations Act"** means the Corporations Act 2001 (Cth).

**"Date of Substitution"** has the meaning given in clause 9.2.

**"Deed Poll"** means the Deed Poll dated on or about 12 October 2016 made by ASB in favour of each person who is from time to time a Holder.

**"Equal Ranking Securities"** means all securities which qualify as Tier 2 Capital or which rank or are expressed to rank equally with such securities in a Liquidation of ASB, present and future.

**"Event of Default"** has the meaning given in clause 10.1.

**"Exchange"** means, in relation to a Security, the completion of the Exchange Steps and **"Exchanged"** has a corresponding meaning.

**"Exchange Date"** means, subject to clauses 4.3(a) and 4.3(b), the date of the occurrence of the Non-Viability Trigger Event.

**"Exchange Steps"** means, in relation to a Security:

- (a) the transfer of the Security to ASBH in accordance with clause 5.1(a); and
- (b) the issue by CBA to the relevant Holder or the Nominee (as applicable) of the Exchange Number of CBA Ordinary Shares in accordance with clause 5.1(b) or 5.11 (as applicable) and the Co-Ordination Agreement.

**"Exchange Number"** has the meaning given in clause 5.2.

**"Face Value"** means NZ\$1.00 per Security.

**"FATCA"** means Sections 1471 through 1474 of the United States Internal Revenue Code of 1986, as amended (or any consolidation, amendment, re-enactment or replacement of those sections and including any current or future regulations or official interpretations issued, agreements entered into or non-US laws enacted in relation to those sections) and includes the Double Tax Agreement (United States of America — FATCA) Order 2014.

**"Foreign Holder"** means a Holder:

- (a) whose address in the Register is a place outside Australia or New Zealand;
- (b) in respect of whom ASB receives written notice from CBA to the effect that CBA believes that that Holder may not be a resident of Australia or New Zealand; or
- (c) who CBA otherwise believes may be a person to whom offers of securities are subject to the securities laws of another country and CBA is not satisfied that the laws of the country in which CBA believes the Holder is resident or the country to whose securities laws offers of securities to the Holder may be subject permit the offer of CBA Ordinary Shares to, or holding or acquisition of CBA Ordinary Shares by, the Holder (but neither ASB or CBA will be bound to enquire into those laws), either unconditionally or after compliance with conditions which CBA, in its absolute discretion, regards as acceptable and not unduly onerous.

**"Holder"** means a person whose name is for the time being recorded in the Register as the owner of a Security (except where otherwise specified in the Deed Poll).

**"Ineligible Holder"** means a Holder who is prohibited or restricted by any applicable law or regulation in force in Australia (including but not limited to Chapter 6 of the Corporations Act, the Foreign Acquisitions and Takeovers Act 1975 (Cth), the Financial Sector (Shareholdings) Act 1998 (Cth) and Part IV of the Competition and Consumer Act 2010) from being offered, holding or acquiring CBA Ordinary Shares (provided that if the relevant prohibition or restriction only applies to the Holder in respect of some of its Securities, it shall only be treated as an Ineligible Holder in respect of those Securities and not in respect of the balance of its Securities), and includes a Foreign Holder. ASB will be entitled to treat a Holder as not being an Ineligible Holder unless the Holder has otherwise notified the Registry after the Issue Date and prior to the Exchange Date.

**"Interest"** means interest payable on Securities under these Terms.

**"Interest Payment Date"** means, in respect of each Security, 15 March, 15 June, 15 September and 15 December each year until the Maturity Date, Redemption Date, Exchange Date or Write Down Date (each a **"Scheduled Interest Payment Date"**), and also the Maturity Date and Redemption Date. If any of these Interest Payment Dates is not a Business Day, then the payment will be made in accordance with clause 7.3.

**"Interest Period"** means, in relation to a Security, each period commencing on (and including) an Interest Payment Date and ending on (but excluding) the next Interest Payment Date. However:

- (a) the first Interest Period commences on (and includes) the Issue Date; and
- (b) the final Interest Period ends on (but excludes) the Maturity Date or Redemption Date, as applicable.

**"Interest Rate"** has the meaning given in clause 2.2.

**"Issue Date"** means the date of issue of the Securities as recorded in the Register.

**"Issue Date VWAP"** means the VWAP during the period of 20 Business Days on which trading in CBA Ordinary Shares took place immediately preceding but excluding the Issue Date, as adjusted in accordance with clauses 5.5 to 5.8.

**"Junior Ranking Securities"** means:

- (a) all securities which qualify as Tier 1 Capital or which rank or are expressed to rank equally with such securities in a Liquidation of ASB, present and future; and
- (b) all shares of ASB (including ordinary and preference shares), present and future.

**"Level 1"** and **"Level 2"** each has the meaning given to that term by APRA from time to time.

**"Liquidation"** means the liquidation, winding up or dissolution of ASB otherwise than for the purpose of, and followed by, an amalgamation or solvent reconstruction.

**"Margin"** has the meaning given in clause 2.2.

**"Market Rate"** has the meaning given in clause 2.2.

**"Maturity Date"** means the Scheduled Interest Payment Date falling 10 years after the Issue Date.

**"Maximum Exchange Number"** has the meaning given in clause 5.2.

**"Meeting Provisions"** means the provisions for the convening of meetings of, and passing of resolutions by, Holders set out in Schedule 2 of the Deed Poll.

**"Minimum Holding"** means Securities with an aggregate Face Value of NZ\$5,000 and thereafter multiples of NZ\$1,000.

**"New Zealand dollars", "NZ\$", "NZD" or "New Zealand cent"** means the lawful currency of New Zealand.

**"NOHC"** means a "non-operating holding company" within the meaning of the Banking Act.

**"NOHC Event"** occurs when the CBA Board initiates a restructure of CBA Group and a NOHC becomes the ultimate holding company of CBA and ASB.

**"Nominee"** has the meaning given in clause 5.11.

**"Non-Viability Trigger Event"** means:

- (a) an ASB Non-Viability Trigger Event; or
- (b) a CBA Non-Viability Trigger Event.

**"NZDX Listing Rules"** means the Main Board/Debt Market Listing Rules of NZX from time to time with any applicable modification, waiver or ruling granted by NZX.

**"NZX"** means NZX Limited.

**"NZX Debt Market"** means the New Zealand debt market operated by NZX.

**"Offer"** means the invitation by ASB in the PDS to subscribe for Securities.

**"Optional Redemption Date"** means any Scheduled Interest Payment Date on or after the Call Option Date.

**"Partial Interest Period"** means an Interest Period that either commences on (and includes) or ends on (but excludes) a date that is not a Scheduled Interest Payment Date.

**"PDS"** means the product disclosure statement relating to the Offer dated on or about 25 October 2016.

**"RBNZ"** means the Reserve Bank of New Zealand or any successor body responsible for prudential regulation of ASB.



**"Reclassification"** has the meaning given in clause 5.4(a).

**"Record Date"** means:

- (a) the date that is ten calendar days prior to the relevant Interest Payment Date, Maturity Date, Redemption Date, or any other date which is subject to a Record Date; or
- (b) such other date determined by ASB in its absolute discretion and communicated to NZX, the Registry and Holders,

or such other date as may be required by, or agreed with, NZX. If a Record Date is a day which is not a Business Day, then the Record Date will be the immediately preceding Business Day. For the purposes of determining the Record Date for an Interest Payment Date, the Business Day convention in clause 7.3 shall be disregarded.

**"Redemption"** means the redemption of all or some Securities under these Terms and **"Redeem"** and **"Redeemed"** have corresponding meanings.

**"Redemption Date"** means, in respect of each Security, the date specified by ASB as the Redemption Date in accordance with clause 3.

**"Register"** means the register of Holders maintained by the Registry in physical or electronic form.

**"Registry"** means Computershare Investor Services Limited or any other person appointed by ASB to maintain the Register.

**"Related Entity"**:

- (a) in relation to ASB, has the meaning given to "related party" by RBNZ from time to time; and
- (b) in relation to CBA, has the meaning given by APRA from time to time.

**"Relevant Security"** means a Relevant Tier 1 Security and a Relevant Tier 2 Security.

**"Relevant Tier 1 Security"** means:

- (a) in the case of ASB and an ASB Non-Viability Trigger Event, a security forming part of the Tier 1 Capital of ASB; and
- (b) in the case of CBA and a CBA Non-Viability Trigger Event, a security forming part of the Tier 1 Capital of CBA on a Level 1 basis or Level 2 basis.

**"Relevant Tier 2 Security"** means:

- (a) in the case of ASB and an ASB Non-Viability Trigger Event, a security forming part of the Tier 2 Capital of ASB; and
- (b) in the case of CBA and a CBA Non-Viability Trigger Event, a security forming part of the Tier 2 Capital of CBA on a Level 1 basis or Level 2 basis.

**"Reserve Bank Act"** means the Reserve Bank of New Zealand Act 1989 (NZ).

**"Scheduled Interest Payment Date"** has the meaning given in the definition of Interest Payment Date.

**"Security"** means a subordinated debt security issued in accordance with, and subject to, the Deed Poll.

**"Senior Ranking Obligations"** means all deposits and other liabilities, securities and other obligations of ASB, present and future, other than Equal Ranking Securities or Junior Ranking Securities.

**"Solvency Condition"** has the meaning given in clause 1.6(a).

**"Solvent"** means satisfying the solvency test contained in section 4 of the Companies Act and **"Insolvent"** shall be construed accordingly. In interpreting this definition it shall be applied to the ASB Group as if the ASB Group was a single entity and due account will be taken of the ability and willingness of the members of the ASB Group to meet the debts of other members of the ASB Group.

**"Special Resolution"** means:

- (a) a resolution passed at a meeting of Holders duly convened and held under the Meeting Provisions:
  - (i) by at least 75% of Holders voting on a show of hands (unless paragraph (b) below applies); or
  - (ii) if a poll is duly demanded, by at least 75% of the votes cast; or
- (b) a resolution passed by written resolution by Holders of at least 75% of the aggregate Face Value of Securities then outstanding.

**"Subsidiary"** has the meaning given in the Corporations Act.

**"Successor"** has the meaning given in clause 9.

**"Terms"** means these terms and conditions of the Securities as set out in Schedule 1 of the Deed Poll.

**"Tier 1 Capital"** means:

- (a) in the case of ASB, the Tier 1 Capital of ASB, as defined by RBNZ from time to time; and
- (b) in the case of CBA, the Tier 1 Capital of CBA on the relevant Level 1 or Level 2 basis, as defined by APRA from time to time.

**"Tier 2 Capital"** means:

- (a) in the case of ASB, the Tier 2 Capital of ASB, as defined by RBNZ from time to time; and
- (b) in the case of CBA, the Tier 2 Capital of CBA on the relevant Level 1 or Level 2 basis, as defined by APRA from time to time.

**"unclaimed money"** has the meaning given in clause 7.5(a).

**"VWAP"** means the average of the daily volume weighted average prices of CBA Ordinary Shares traded on ASX during the relevant VWAP Period, subject to any adjustments made under clauses 5.3 and 5.4, but the trades taken into account in determining such daily volume weighted average prices will exclude special crossings, crossings prior to the commencement of normal trading or during the closing phase or after hours adjustment phase, overnight crossings, overseas trades, trades pursuant to the exercise of options over CBA Ordinary Shares, or any other trade determined by the CBA Board in its discretion not to be reflective of normal trading in CBA Ordinary Shares and, notified in writing to ASB by CBA.

**"VWAP Period"** means:

- (a) in the case of the calculation of the Exchange Number, the period of 5 Business Days on which trading in CBA Ordinary Shares took place immediately preceding (but excluding) the day on which the Non-Viability Trigger Event occurred; or
- (b) in the case of the Issue Date VWAP, the period of 20 Business Days on which trading in CBA Ordinary Shares took place immediately preceding (but excluding) the Issue Date.

**"Write Down Date"** means the date on which a Write Down occurs.

**"Written Down"** means, in relation to a Security, the immediate and irrevocable termination of a Holder's rights in relation to the Security in accordance with clause 4.3(a) or 4.3(b), and **"Write Down"** has a corresponding meaning.

# ASX ANNOUNCEMENT

CommonwealthBank



## SCHEDULE 2 – RIGHTS AND LIABILITIES ATTACHING TO CBA ORDINARY SHARES

CBA Ordinary Shares may be issued to Holders by way of Conversion. CBA Ordinary Shares may also be issued to a nominee to hold for sale for the benefit of a Holder if Conversion occurs and the Holder has notified CBA that they do not wish to receive CBA Ordinary Shares or the Holder is an Ineligible Holder.

The rights and liabilities attaching to CBA Ordinary Shares are set out in the constitution. The constitution of CBA is dated 13 November 2008, and incorporates amendments up to and including all amendments passed at the Annual General Meeting on 13 November 2008 (Constitution). The Constitution provides for the following:

### **Rights attaching to CBA Ordinary Shares**

Any CBA Ordinary Shares issued to Holders by way of Conversion will be fully paid and will rank equally with CBA Ordinary Shares already on issue in all respects.

### **Transfers**

Subject to the ASX Settlement Operating Rules, transfers of CBA Ordinary Shares are not effective until registered. CBA Ordinary Shares are transferable, subject to the ASX Listing Rules and the Constitution, and the right of the directors of CBA to refuse to register a transfer of CBA Ordinary Shares in limited circumstances.

Unless otherwise required by law or the Constitution, CBA is entitled to treat the registered holder as the absolute owner of a share. CBA Ordinary Shares held by a trustee may, with the directors' consent, be identified as being subject to the relevant trust.

Except in limited circumstances, CBA is not bound to register more than three persons as joint holders of a CBA Ordinary Share. If CBA is required to issue a share certificate for a share by law or the ASX Listing Rules, CBA is not required to issue more than one certificate.

Restrictions apply in respect of persons who become entitled to CBA Ordinary Shares by reason of a holder's death or bankruptcy. In the case of the death of a holder, the survivor or survivors jointly registered as shareholders and the legal personal representatives of a sole holder are the only persons CBA will recognise as having title to the member's interest in the shares.

# ASX ANNOUNCEMENT

## **Dividends**

Holders of CBA Ordinary Shares may receive dividends if the directors determine that a dividend is payable. CBA may not pay a dividend unless CBA's assets exceed its liabilities, the payment of the dividend is fair and reasonable to the shareholders of CBA as a whole and the payment does not materially prejudice the ability of CBA to pay its creditors. Payment may also be subject to the rights of holders of securities carrying preferred rights. CBA pays shareholders with registered addresses in Australia, New Zealand and the United Kingdom cash dividends by direct credit. If a direct credit payment instruction is not provided, the dividend will be held in a non-interest bearing account. CBA also has a dividend reinvestment plan for eligible shareholders. The directors of CBA determine whether or not the dividend reinvestment plan operates for each dividend and their decision is announced to ASX.

## **Winding up**

On winding up of CBA, holders of CBA Ordinary Shares will participate in the division of any surplus assets of CBA (subject to the rights of holders of shares carrying preferred rights).

## **Meetings**

Holders of CBA Ordinary Shares are entitled to receive notice of, attend and, subject to the Constitution, to vote in person, by representative, attorney or proxy at general meetings of CBA.

On a show of hands, each holder (regardless of the number of shares held) has one vote. On a poll, each holder has one vote for each fully paid CBA Ordinary Share held.

## **Issue of further shares**

The directors of CBA control the issue of shares. Subject to the Corporations Act and ASX Listing Rules, the directors may issue further shares, and grant rights or options over shares, on such terms as they think fit.

## **Restrictions of ownership of CBA Ordinary Shares**

Australian laws including financial sector and foreign ownership and takeover laws impose certain limitations on the right of persons to hold, own or vote on CBA Ordinary Shares.

# ASX ANNOUNCEMENT

**Commonwealth**Bank



## **Variation of the Constitution**

CBA may seek approval by special resolution of holders of CBA Ordinary Shares (passed by at least 75% of the votes cast by members entitled to vote on the resolution) to vary the Constitution.